

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

G & G FREMONT, LLC, a Nevada limited
liability company; CRAZY ELY WESTERN
VILLAGE, LLC, a Nevada limited liability
company,

Case No.: 2:14-cv-00688-GMN-GWF

ORDER

Plaintiffs,

vs.

CITY OF LAS VEGAS, a Nevada municipal
corporation; LICENSE OFFICER LON
GRASMICK, in his personal and official
capacity; LICENSE OFFICER LATANIA
WEBB, in her personal and official capacity,

Defendants.

Pending before the Court is the Motion for Summary Judgment (ECF No. 34) filed by Defendants City of Las Vegas (“City”), License Officer Lon Grasmick (“Grasmick”), and License Officer Latania Webb (“Webb”) (collectively, “Defendants”). Plaintiffs G&G Fremont, LLC (“G&G”) and Crazy Ely Western Village, LLC (“Western Village”) (collectively, “Plaintiffs”) filed a Response (ECF No. 39), and Defendants filed a Reply (ECF No. 40).

I. BACKGROUND

Plaintiff G&G is a limited-liability company organized and existing under the laws of the State of Nevada. (Compl. ¶ 8, ECF No. 1). Likewise, Plaintiff Western Village is a limited-liability company organized and existing under the laws of the State of Nevada. (*Id.* ¶ 10). Plaintiffs operate two souvenir and packaged liquor stores along the Fremont Street Experience in the City of Las Vegas, Nevada. (*Id.* ¶¶ 9, 11). Defendant City is a Nevada municipal

1 corporation. (*Id.* ¶ 12). Defendants Grasmick and Webb are enforcement officers with the
2 Business License Division of the City of Las Vegas. (*Id.* ¶¶ 13–14).

3 On March 20, 2013, the City of Las Vegas passed Las Vegas Municipal Code
4 (“LVMC”) 6.02.390–6.02.460 (“Civil Penalty Scheme”). Ord. No. 6242, § 1, 3-20-13. The
5 Civil Penalty Scheme permits the City to treat a violation of any provision of Title 6 regarding
6 Las Vegas Business License Ordinances as a civil violation in the alternative to criminal
7 prosecution. LVMC 6.02.390. Additionally, the Civil Penalty Scheme imposes minor
8 monetary civil penalties in a maximum amount of \$500 per violation. LVMC 6.02.460. The
9 civil penalties are imposed by an enforcement officer upon issuance of a “Notice of Violation”
10 to the alleged violator. LVMC 6.02.410. The Civil Penalty Scheme permits a challenge to the
11 Notice of Violation through a verbal and informal hearing wherein an attorney that is licensed
12 to practice law in Nevada presides as a “hearing officer.” LVMC 6.02.430. Upon completion
13 of the hearing, the hearing officer then enters a written decision of whether or not to uphold the
14 Notice of Violation. *Id.* The City Attorney may then petition the Las Vegas Municipal Court to
15 enter the civil judgment against a defendant in an amount equal to that stated in the written
16 decision of the hearing officer if the City Attorney finds such action to be necessary to enforce
17 the decision. *Id.*

18 On December 5, 2013, Defendant Webb issued a Notice of Violation to G&G for an
19 alleged infraction of the Business License Code (“G&G Notice”). (*Id.* ¶ 34; Ex. A to the
20 Compl.). Similarly, on January 24, 2014, Defendant Grasmick issued a Notice of Violation to
21 Western Village for an alleged infraction of the Business License Code (“Western Village
22 Notice”). (*Id.* ¶ 35; Ex. B to the Compl.). Subsequently, the G&G Notice and the Western
23 Village Notice were adjudicated before a hearing officer on March 26, 2014, with a hearing
24 officer finding for the City. (*Id.* ¶ 36; Ex. C to Resp. to Mot. Prelim. Inj., ECF No. 12).
25 Accordingly, Plaintiffs’ civil penalties under the Civil Penalty Scheme have been paid, penalty

proceedings have concluded, and Plaintiffs have not pursued further judicial review in the Nevada Courts. (Mot. Summ. J. 2:23–25; *see* Ex. C to Resp. to Mot. Prelim. Inj.).

Based on Plaintiffs’ prior penalties, Plaintiffs bring a constitutional challenge to Defendant City’s Civil Penalty Scheme. Specifically, Plaintiffs assert nine (9) causes of action regarding the constitutionality of the enactment and enforcement of the Civil Penalty Scheme: (1) Violation of 5th and 14th Amendments: Void for Vagueness; (2) Violation of 5th and 14th Amendments: Denial of Procedural Due Process; (3) Violation of 5th and 14th Amendments: Denial of Substantive Due Process; (4) Violation of 14th Amendment: Denial of Equal Protection; (5) Violation of Civil Rights under 42 U.S.C. § 1983; (6) Violation of Civil Rights under 42 U.S.C. § 1983: Custom, Policy, and Practice; (7) Negligent Hiring, Retention, Supervision, and Training; (8) Declaratory Relief; (9) Preliminary and Permanent Injunction. (*Id.* ¶¶ 40–101). In the instant Motion, Defendants request that the Court enter Summary Judgment in favor of Defendants as to all causes of action brought by Plaintiffs. (Mot. Summ. J. 3:4–6).

II. LEGAL STANDARD

The Federal Rules of Civil Procedure provide for summary adjudication when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *See id.* “Summary judgment is inappropriate if reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A

1 principal purpose of summary judgment is “to isolate and dispose of factually unsupported
2 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

3 In determining summary judgment, a court applies a burden-shifting analysis. “When
4 the party moving for summary judgment would bear the burden of proof at trial, it must come
5 forward with evidence which would entitle it to a directed verdict if the evidence went
6 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing
7 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*
8 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In
9 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
10 moving party can meet its burden in two ways: (1) by presenting evidence to negate an
11 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
12 party failed to make a showing sufficient to establish an element essential to that party’s case
13 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–
14 24. If the moving party fails to meet its initial burden, summary judgment must be denied and
15 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,
16 398 U.S. 144, 159–60 (1970).

17 If the moving party satisfies its initial burden, the burden then shifts to the opposing
18 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*
19 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
20 the opposing party need not establish a material issue of fact conclusively in its favor. It is
21 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
22 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
23 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
24 summary judgment by relying solely on conclusory allegations that are unsupported by factual
25 data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go

beyond the assertions and allegations of the pleadings and set forth specific facts by producing competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

At summary judgment, a court's function is not to weigh the evidence and determine the truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249. The evidence of the non-movant is "to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249–50.

III. DISCUSSION

In the Motion for Summary Judgment, Defendants argue that Plaintiffs have not established a viable claim against any of the Defendants in this matter. (*Id.* 3:4). With the exception of Plaintiffs' ninth claim for relief regarding preliminary and permanent injunction, which is a remedy not a separate cause of action, the Court will address Plaintiffs' claims in turn. Specifically, the Court will begin with Plaintiffs' first through third claims for relief that deal with the Civil Penalty Scheme's alleged violation of Plaintiffs' due process rights under the Fifth and Fourteenth Amendments. The Court will then determine whether Defendants are entitled to Summary Judgement as to Plaintiffs' remaining claims for relief.

A. Violation of 5th and 14th Amendments: Void for Vagueness

Beginning with the first claim for relief, Plaintiffs' argue the Civil Penalty Scheme violates Plaintiffs' Fifth and Fourteenth Amendment rights because it is void for vagueness. (Compl. ¶¶ 40–43). A statute may be impermissibly vague in two ways: (1) if it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits"; or (2) "if it 'encourages arbitrary and discriminatory enforcement.'" *Sacco v. City of Las Vegas*, No. 206-CV-0714-RCJ-LRL, 2007 WL 2429151, at *7 (D. Nev. Aug. 20, 2007) (quoting *Chicago v. Morales*, 527 U.S. 41, 56-57 (1999)). Moreover, "where inherently vague statutory language permits such selective law enforcement, there is a denial of due process."

1 *Smith v. Goguen*, 415 U.S. 566, 576 (1974). In accord, an ordinance that does not prohibit any
 2 conduct falls outside the scope of the void-for-vagueness doctrine. *See United States v. David*
 3 *H.*, 29 F.3d 489, 491 (9th Cir. 1994); *Porto v. City of Newport Beach*, No. SACV 11-0180-
 4 DOC MLG, 2011 WL 2470128, at *8 (C.D. Cal. May 20, 2011), *report and recommendation*
 5 *adopted*, No. SACV 11-00180-DOC, 2011 WL 2462555 (C.D. Cal. June 21, 2011), *aff'd*, 509
 6 F. App'x 665 (9th Cir. 2013) (stating that an ordinance “plainly does not prohibit any conduct
 7 and therefore falls outside the purview of the void-for-vagueness doctrine.”).

8 Here, the Civil Penalty Scheme at issue neither defines conduct nor allows for arbitrary
 9 and discriminatory enforcement. The Scheme is a procedural ordinance that allows the City to
 10 treat a violation of any provision of Title 6 of the Las Vegas Code of Ordinances as a civil
 11 violation. *See* LVMC 6.02.390. Additionally, the ordinances under Title 6 that prohibit
 12 conduct are the ordinances that also provide enforcement officers with direction as to when an
 13 officer will apply the Civil Penalty Scheme. Because Plaintiffs do not challenge any statutes
 14 that prohibit or define conduct, the due process considerations that underlie Plaintiffs’ void for
 15 vagueness challenge have no application in the context of the Civil Penalty Scheme. *See David*
 16 *H.*, 29 F.3d at 491. Accordingly, the Court will grant Defendants’ Motion for Summary
 17 Judgment in favor of Defendants as to Plaintiffs’ first claim for relief.

18 **B. Violation of 5th and 14th Amendments: Denial of Procedural Due Process**

19 The Court now turns to Plaintiffs’ second claim for relief—denial of procedural due
 20 process in violation of the Fifth and Fourteenth Amendments. (*See* Compl. ¶ 45). Plaintiffs
 21 claim the Civil Penalty Scheme violates the Defendants’ rights to procedural due process by
 22 depriving the Defendants of their right to a fair hearing in the following ways: failure to
 23 provide any meaningful procedural rules governing the conduct of the hearing; deeming the
 24 Notice of Violation to be “prima facie proof” of an infraction shifting the burden of proof to the
 25 Defendants to prove their innocence; permitting the Notice of Violation to constitute “prima

1 facie proof” even when it contains errors or omission; failing to provide any opportunity for
2 pre-hearing discovery; failing to provide any process by which witnesses’ attendance may be
3 compelled at the hearing; failing to require the attendance of the enforcement officer issuing the
4 Notice of Violation; and failing to provide for judicial (or any) review of the hearing officer’s
5 decision. (*Id.*).

6 “[C]onsideration of what procedures due process may require under any given set of
7 circumstances must begin with a determination of the precise nature of the government function
8 involved as well as of the private interest that has been affected by governmental action”
9 *Cafeteria & Rest. Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 895 (1961).
10 Here, the Court finds no controlling decision of the Supreme Court or of this Court which has
11 defined the procedural route that must be followed in a case like this. Therefore, the Court will
12 evaluate the sufficiency of the procedures under the general guidelines from analogous cases
13 and decisions of other courts. In doing so, the Court analyzes whether the Civil Penalty
14 Scheme provides sufficient due process by weighing three factors: “(1) [plaintiff’s] private
15 property interest; (2) the risk of an erroneous deprivation of such interest through the
16 procedures used, as well as the probable value of any additional safeguards; and (3) the
17 Government’s interest in maintaining its procedures, including the burdens that would be
18 imposed by additional procedural requirements.” *Foss v. Nat’l Marine Fisheries Serv.*, 161
19 F.3d 584, 589 (9th Cir. 1998). While the Court in *Foss* analyzed due process in the context of
20 acquiring a federal individual fishing quota permit, the Court finds the three factors are
21 appropriate in examining whether the Civil Penalty Scheme provides sufficient due process.

22 Here, Plaintiffs’ private property interest at stake consists of monetary fines as a result of
23 ordinance violations processed under LVMC 6.02.390–6.02.460. Contrary to Plaintiffs’
24 argument, the Civil Penalty Scheme does not state at any point that the outcome of a hearing
25 under the Scheme will be used to revoke a business license or land use entitlements. (*See Resp.*

1 3:16–19). Further, it would be improper for the Court to recognize such adverse action by the
2 City Council in a speculated future hearing. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 101
3 (1983) (citations omitted) (stating that in order for judicial relief to be available, a plaintiff not
4 only must demonstrate a “personal stake in the outcome,” but also must prove that he “has
5 sustained or is immediately in danger of sustaining some direct injury as the result of the
6 challenged official conduct and the injury or threat of injury must be both real and immediate,
7 not conjectural or hypothetical.”). Moreover, Plaintiffs do not provide any facts that illustrate a
8 real and immediate threat of a hearing that would deny or impair Plaintiffs’ business licenses
9 based on previous Notices of Violation under the Civil Penalty Scheme. The only evidence
10 that potentially demonstrates a review and denial of a business license because of the Civil
11 Penalty Scheme pertains to L’Chaim Western Village Properties, who is not a party to the
12 current action. (*See* Ex. A to Resp., ECF No. 39). Accordingly, the Court recognizes Plaintiffs’
13 private property interest at stake under the Civil Penalty Scheme consists of monetary fines up
14 to five-hundred dollars.

15 The Court now turns to the Plaintiffs’ due process claims to analyze the risk of an
16 erroneous deprivation of Plaintiffs’ property interest through the Civil Penalty Scheme’s
17 procedures in place, as well as the probable value of any additional safeguards. *See Foss*, 161
18 F.3d at 589. The Court will first address Plaintiffs’ second claim for relief and discuss each of
19 the arguments stated in Plaintiffs’ Complaint in turn.

20 First, Plaintiffs argue the Civil Penalty Scheme unconstitutionally deems the Notice of
21 Violation to be “prima facie proof” of an infraction, shifting the burden on the Defendants to
22 prove innocence. The relevant portion of the Civil Penalty Scheme provides the following
23 description to the procedure of a hearing:

24 Any hearing conducted pursuant to this Section shall be presided
25 over by a Hearing Officer who shall be an attorney licensed to
practice law in the State of Nevada. With respect to any such
hearing, a properly filed Notice of Violation shall constitute a claim

1 of liability and a claim for relief and no other such claim shall be
2 required. Prima facie proof of the violation alleged shall be
3 established by the City providing the Hearing Officer with either a
4 certified copy of the Notice of Violation or the data stored in a
5 computer or other device as described in LVMC 6.02.400. No
6 formal appearance by the City Attorney's Office is required. The
7 hearings and dispositions of all such actions shall be informal, with
8 the Hearing Officer receiving witness statements or testimony and
9 other evidence for the sole purpose of dispensing fair and speedy
10 justice between the parties. A defendant may pay the amount of the
11 civil fine in lieu of appearing before the Hearing Officer.

12 LVMC 6.02.430(D). Contrary to Plaintiffs' argument, the Civil Penalty Scheme does not
13 create an unconstitutional mandatory presumption that illegally shifts the burden of proof to a
14 defendant. (*See* Resp. 16–17). At no point does the Civil Penalty Scheme presume that a
15 defendant is in violation of an ordinance without any evidence evincing such claim. Rather,
16 every hearing under the Scheme requires a Notice of Violation issued under the penalty of
17 perjury to serve as evidence against a defendant. *See* LVMC 6.02.400(D). A defendant must
18 subsequently provide witness statements, testimony, and other evidence to prove any defense
19 raised by the defendant. LVMC 6.02.430(D–E). Therefore, the Civil Penalty Scheme does not
20 unconstitutionally deny Plaintiffs their right to procedural due process by deeming the Notice
21 of Violation to be “prima facie proof” of an infraction.

22 Plaintiffs' next argument, that the Civil Penalty Scheme unconstitutionally permits the
23 Notice of Violation to constitute “prima facie proof” even when it contains errors or omission,
24 is equally without merit. A hearing under the Civil Penalty Scheme simply requires a
25 defendant to demonstrate substantial prejudice from an error or omission by a preponderance of
the evidence. LVMC 6.02.400(B). Upon a defendant's demonstration of such prejudice, a
hearing officer would subsequently find that a violation did not occur or that the defendant
should not be held liable. LVMC 6.02.430(F). Further, in every citation filed by an
enforcement officer, the Notice of Violation is issued under the penalty of perjury. *See* LVMC

1 6.02.400(D). Such penalty adequately guards against the risk of an erroneous deprivation of
2 Plaintiffs' property interest by ensuring every enforcement officer applies truthful and authentic
3 citations. Altogether, since Plaintiffs' can readily dispute errors and omissions in a Notice of
4 Violation, paired with the fact that every Notice of Violation strongly guards against false and
5 inaccurate citations, the Civil Penalty Scheme does not deprive Plaintiffs of procedural due
6 process by allowing a Notice of Violation containing errors or omissions to constitute "prima
7 facie proof" of a violation.

8 The Court now turns to Plaintiffs' argument that the Scheme unconstitutionally fails to
9 provide any opportunity for pre-hearing discovery. (Compl. ¶ 45). Many courts have held,
10 "[t]here is no basic constitutional right to pretrial discovery in administrative proceedings."
11 *Silverman v. Commodity Futures Trading Com'n* 549 F.2d 28, 33 (7th Cir. 1977) *accord*
12 *Weinberg v. Commodity Futures Trading Com'n*, 699 F. Supp. 808, 813 (C.D. Cal. 1988) *affd.*
13 884 F.2d 1396 (9th Cir. 1989). Here, the Civil Penalty Scheme provides Plaintiffs with ample
14 opportunity to collect witness statements, testimony, and other evidence. LVMC 6.02.430(D–
15 E). Further, imposition of pretrial discovery would considerably undermine the Civil Penalty
16 Scheme's purpose of "dispensing fair and speedy justice between the parties." LVMC
17 6.02.430(D). Accordingly, the Court does not find a risk of an erroneous deprivation of
18 Plaintiffs' monetary interest through the discovery procedures currently in place.

19 Next, Plaintiffs argue the Civil Penalty Scheme unconstitutionally fails to provide any
20 process by which witness attendance may be compelled at the hearing and unconstitutionally
21 fails to require the attendance of the enforcement officer issuing the Notice of Violation.
22 (Compl. ¶ 45). However, the lack of subpoena power available to a party in a hearing under the
23 Civil Penalty Scheme does not indicate an unconstitutional process. *See Travers v. Jones*, 323
24 F.3d 1294, 1297 (11th Cir. 2003) (stating that, in the context of an administrative hearing
25 regarding an employee disciplinary action, "a party has no right to subpoena witnesses to state

administrative hearings.”) accord *Amundsen v. Chicago Park Dist.*, 218 F.3d 712, 717 (7th Cir. 2000) (stating “this court has held that in the administrative hearing context, the ability to subpoena witnesses is not an absolute right”). As stated above, the Civil Penalty Scheme grants Plaintiffs the ability to collect various forms of evidence to rebut any evidence brought against them. Additionally, in regard to the presence of the enforcing officer, the Notice of Violation constitutes an officer’s detailed explanation of the facts at the time of citation and declared under the penalty of perjury. This sufficiently provides Plaintiffs, as well as any party in a hearing, with ample explanation as to the facts surrounding a citation. Further, if the ordinance did compel the enforcing officer to later attend a hearing on the citation, it would greatly undermine the City’s interest in “dispensing fair and speedy justice between the parties.” LVMC 6.02.430(D). Therefore, based on the various evidentiary options and procedural safeguards already available to Plaintiffs, along with the fact that the ability to subpoena witnesses is not an absolute right in informal hearings, the Court rejects Plaintiffs’ claim that the alleged denial of their right to subpoena witnesses violates due process. Additionally, the Civil Penalty Scheme does not unconstitutionally deprive Plaintiffs of due process by not requiring the attendance of the enforcement officer that issued the Notice of Violation.

Lastly, the Court turns to Plaintiffs’ argument that the hearing unconstitutionally fails to provide for judicial review of the hearing officer’s decision. Under Nevada law, an extraordinary writ is the proper vehicle for seeking judicial review of the merits of a hearing officer’s actions and decision under the Civil Penalty Scheme. *See Washington v. Clark Cty. Liquor & Gaming Licensing Bd.*, 100 Nev. 425 (1984) (stating “[w]hen a party seeks review in the district court of a ruling of an administrative agency not governed by the Administrative Procedure Act, however, an extraordinary writ, such as certiorari, is the proper vehicle for seeking judicial review of the merits of the agency’s actions to determine whether the agency acted arbitrarily or capriciously.”). While the extraordinary writ is a discretionary mechanism

1 to review administrative decisions, there is nothing preventing any decision made by a hearing
2 officer from being appealed and reviewed based on the merits of the case.

3 Ultimately, the risk of an erroneous deprivation of Plaintiffs' monetary interest through
4 the Civil Penalty Scheme's current procedures is insignificant. The Scheme's current hearing
5 procedures provide multiple methods for the Plaintiffs' to gather all necessary evidence to
6 refute a Notice of Violation and argue their position. Further, the procedures currently in place
7 fulfill the City's goal of "dispensing fair and speedy justice between the parties." LVMC
8 6.02.430(D). Additional procedural requirements would only impose significant and
9 unnecessary burdens to the hearing process. *See Foss*, 161 F.3d at 589. Therefore, the Court
10 finds that the Civil Penalty Scheme provides all the notice and process due. The Court grants
11 Defendants' Motion for Summary Judgment in favor of Defendants as to Plaintiffs' second
12 claim for relief.

13 **C. Violation of 5th and 14th Amendments: Denial of Substantive Due Process**

14 The Court now turns to Plaintiffs' third claim for relief regarding the authority of the
15 City of Las Vegas to enact the Civil Penalty Scheme under its Charter or Nevada law. Here,
16 Plaintiffs' cite *Tucker v. Mayor and Bd. of Alderman*, 4 Nev. 20, 26 (1868) to show that "the
17 City is a municipal corporation created by a special act of the Nevada Legislature, and its
18 powers are limited to those expressly granted in its Charter." (Resp. 11:5–8). However, in
19 regard to the delegation of police powers, the City may apply discretion in regulating such
20 matters. *See generally Flick Theater, Inc. v. City of Las Vegas*, 104 Nev. 87, 90, 752 P.2d 235,
21 237 (1988) (stating that "[t]o the contrary, the intent of the state, as clearly manifested in the
22 above statutes, is to vest in local government the authority to regulate [the use of buildings and
23 structures, in order to promote the health and general welfare of the community] as they see
24 fit.").

1 Here, the Nevada Legislature explicitly grants the City of Las Vegas authority to impose
2 civil penalties in lieu of criminal sanctions. NRS 268.019. Specifically, NRS 268.019 provides:

3 1. Except as otherwise provided in subsection 2, the governing
4 body of an incorporated city may by ordinance provide that the
5 violation of a particular ordinance of such governing body imposes a
6 civil liability to the city in an amount not to exceed \$500 instead of a
7 criminal sanction.

8 2. The governing body of an incorporated city may by ordinance
9 provide that a violation of an ordinance adopted by the governing
10 body pursuant to NRS 268.4122 by the owner of commercial
11 property imposes a civil liability to the city in an amount not to
12 exceed \$1,000 instead of a criminal sanction.

13 Further, the Las Vegas City Charter allows for the appointment of Hearing Commissioners in
14 the following instances: “[a]ny action for a misdemeanor constituting a violation of chapter 484
15 of NRS, except NRS 484.379; and (b) [a]ny action for a misdemeanor constituting a violation
16 of the Las Vegas Municipal Code, except chapter 11.14 of that Code.” Las Vegas City Charter
17 Section 4.040(1). The Civil Penalty Scheme simply allows misdemeanor ordinance violations
18 under Title 6 of the Las Vegas Municipal Code to be enforced as a civil penalty. Additionally,
19 contrary the Plaintiffs’ argument, the Civil Penalty Scheme does not illegally usurp the
20 Municipal Court System’s jurisdiction over civil proceedings upon imposition of the civil
21 penalty. Instead, upon imposition of a hearing officer’s decision under the Civil Penalty
22 Scheme, the City Attorney may petition the Las Vegas Municipal Court for the entry of civil
23 judgment against a party in an amount equal to that stated in the written decision of the Hearing
24 officer. *Id.* Once the City Attorney’s petition for civil judgment is filed with the Municipal
25 Court, an assigned Municipal Court Judge then “has discretion to grant or deny the relief
prayed for therein.” LVMC 6.02.430(I).

Therefore, the Civil Penalty Scheme merely utilizes the misdemeanor process to impose
civil monetary penalties, and subsequently enters the civil penalty decision in the Las Vegas

1 Municipal Court when necessary. Consequently, the Civil Penalty Scheme was not enacted in
2 violation the Las Vegas City Charter or contrary to Nevada law. As a result, the Court will
3 grant Defendants' Motion for Summary Judgment in favor of Defendants as to Plaintiffs' third
4 claim for relief.

5 Pursuant to the Court's analysis, the Civil Penalty Scheme does not violate Plaintiffs'
6 constitutional rights. Plaintiffs' fail to provide any evidence that the Civil Penalty Scheme
7 deprives the Plaintiffs, or any persons, of their fundamental constitutional rights or that the
8 Scheme was illegally enacted.

9 **D. Plaintiffs' Remaining Claims**

10 The Court now addresses Plaintiffs' fourth claim for relief—violation of the Fourteenth
11 Amendment: denial of equal protection. Plaintiffs' allege the Civil Penalty Scheme violated
12 the Plaintiffs' right to equal protection guaranteed by the Fourteenth Amendment because it
13 “arbitrarily discriminates between those entitled to constitutional protections of a criminal
14 proceeding, and those not entitled to the constitutional protections of a criminal proceeding.”
15 (Compl. ¶ 59). Moreover, Plaintiffs' allege that those who go through the Civil Penalty
16 Scheme are not entitled to constitutional protection. However, this is not the case. Rather,
17 although the Civil Penalty Scheme includes some constitutional protections, it does not include
18 the constitutional protections that are provided for criminal proceedings because it is not a
19 criminal proceeding. Therefore, the Court cannot find how the Civil Penalty Scheme's benefit
20 of allowing a violator to be prosecuted civilly as opposed to criminally would thereby be a
21 violation of the equal protection clause under the Fourteenth Amendment. Accordingly, the
22 Court will grant the Defendant's Motion for Summary Judgment as to Plaintiffs' fourth claim
23 for relief.

24 The Court now turns to Plaintiffs' fifth claim for relief—violation of civil rights under
25 42 U.S.C. § 1983. Plaintiffs' argue that, by issuing the Notices of Violation, Defendants Webb

1 and Grasmick deprived the Plaintiffs' of their constitutional rights. (*Id.* ¶ 68). Because the
2 Court finds the Civil Penalty Scheme does not deprive an individual of any constitutional
3 rights, Defendants Webb and Grasmick have not deprived the Plaintiffs' of their constitutional
4 rights by issuing Notices of Violation under the Civil Penalty Scheme. Therefore, the Court
5 grants the Defendants' Motion for Summary Judgment as to Plaintiffs' fifth claim for relief in
6 favor of Defendants.

7 Next, the Court turns to Plaintiffs' sixth claim for relief—violation of civil rights under
8 42 U.S.C. § 1983: custom, policy, and practice. Plaintiffs' allege “[t]he Civil Penalty Scheme
9 is a custom, policy, or practice exhibiting deliberate indifference to the constitutional rights of
10 United States citizens, which, in turn, caused the violations of the Property Owners' rights as
11 described herein.” (*Id.* ¶ 75). Because the Civil Penalty Scheme does not violate the Plaintiffs'
12 constitutional rights, the Court finds that the Civil Penalty Scheme is not a custom, policy, or
13 practice exhibiting deliberate indifference to an individual's constitutional rights. Accordingly,
14 the Court grants summary judgment in favor of Defendants as to Plaintiffs' sixth claim for
15 relief.

16 Plaintiffs' seventh claim for relief alleges that the City breached its duty to exercise care
17 in the hiring, training, and supervision of its business license enforcement officers by “(a) by
18 negligently tolerating or ratifying the practice or policy of its business license enforcement
19 officers in issuing unconstitutional and unlawful Notices of Violation under the Civil Penalty
20 Scheme; and (b) failing to supervise and to adequately train business license enforcement
21 officers.” (*Id.* ¶ 86). However, as previously stated, the Notices of Violation under the Civil
22 Penalty Scheme are neither unconstitutional nor unlawful. Therefore, the City has not breached
23 any duty in hiring, training, and supervising business license enforcement officers, and the
24 Court grants summary judgment in favor of Defendants' as to Plaintiffs' seventh claim for
25 relief.

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment (ECF No. 34) is **GRANTED**.

DATED this 1 day of August, 2016.

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